

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 900 San Jose, California 95110		Hearing Date/Agenda Number P.C.: 6-26-02                      Item:
<h1 style="text-align: center;">STAFF REPORT</h1>		File Number: RCP 02-02-002
		Application Type: Conditional Use Permit
		Council District: 3
		Planning Area: Central
		Assessors Parcel Number(s): 259-40-018
<b>PROJECT DESCRIPTION</b>		Completed by: Amie Glaser
Location: 161 West San Fernando Street		
Gross Acreage: 0.05                      Net Acreage: N/A                      Net Density: N/A		
Existing Zoning: CG                      Existing Use: Convenience store with personal services, including check cashing		
Proposed Zoning: No Change                      Proposed Use: Alcohol Sale for Off-Site Consumption (Off-Sale Alcohol) in conjunction with existing uses		
<b>GENERAL PLAN</b>		Completed by: AG
Land Use/Transportation Diagram Designation Core Area		Project Conformance: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations
<b>SURROUNDING LAND USES AND ZONING</b>		Completed by: AG
North: Greyhound bus station and parking lot		Commercial General (CG)
East: Theater, with live entertainment		Commercial General (CG)
South: Office complex		Commercial General (CG)
West: Fast-food restaurant		Commercial General (CG)
<b>ENVIRONMENTAL STATUS</b>		Completed by: AG
<input checked="" type="checkbox"/> Reuse of Downtown Supplemental EIR, Certified 04/27/99		<input type="checkbox"/> Exempt
<input type="checkbox"/> Environmental Impact Report complete on:		<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration circulated on :		<input type="checkbox"/> Negative Declaration adopted on:
<b>FILE HISTORY</b>		Completed by: AG
Annexation Title: Original City		Date: N/A
<b>HISTORIC STATUS: N/A</b>		Completed by: AG
<b>REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION</b>		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Action		Approved by: _____ Date: _____
<input type="checkbox"/> Conditional Approval <input type="checkbox"/> Recommendation		
<input checked="" type="checkbox"/> Denial		Approved by: _____ Date: _____
<input type="checkbox"/> Uphold Director's Decision		
<b>PROPERTY OWNER</b> Colette Lackovic 1901 South Bascom Ave. #1600 Campbell, CA 95008	<b>BUSINESS OWNER</b> Aboighasem Zahedianfari 161 West San Fernando Street San Jose, CA 95113	

## **PROJECT DESCRIPTION**

The business owner/applicant (dba, Check Expert) is requesting this Conditional Use Permit (CUP) and a Liquor License Exception Permit to allow the retail sale of alcoholic beverages at an existing convenience store and check cashing establishment located at 161 W. San Fernando Street; the alcoholic beverages are intended for consumption off the premises (off-sale of alcoholic beverages). The project site is located in the Market-Almaden Redevelopment Project Area, in the City's downtown. The site is within the Commercial General (CG) Zoning District and is also included in the Downtown Ground Floor Space (DG Area) overlay. The DG Area was established by the City Council in March 2001 to encourage pedestrian-oriented retail and personal service uses at the street-level within central commercial district of the larger downtown area. A CUP is required for the off-sale of alcoholic beverages within the CG-DG Area zoning designations in accordance with Section 20.80.900 of the Municipal Code. A Liquor License Exception Permit is required due to the high concentration of liquor licenses already issued by the Department of Alcoholic Beverage Control (ABC) within the vicinity of the project site.

Check Expert is a convenience store that already provides several types of personal service (i.e., check cashing, post office boxes, wire transfers). The site is adjacent to a variety of land uses: a Greyhound bus station and parking lot, to the north; the Park Center Plaza office complex, to the south, across San Fernando Street; a live performance theater, to the east; a fast-food restaurant, to the west.

In addition to the findings required by Municipal Code, Section 20.80.900, specifically for off-sale of alcoholic beverages, the proposal is subject to the standard Conditional Use Permit findings in Section 20.100.720 and those for a Liquor License Exception. The CUP findings require that the off-sale of alcoholic beverages not be approved unless the establishment would operate without detriment to nearby uses and without detriment to the general welfare of the surrounding area. The Liquor License Exception findings require that the use not create, continue or increase law enforcement problems in the project area.

## **GENERAL PLAN CONFORMANCE**

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows "office, retail, service, residential, and entertainment uses in the Downtown Core Area." While the Core Area designation encourages a broad range of land uses within the downtown, it does so based on their compatibility with neighboring uses and with the objective of furthering the revitalization of downtown, which is one of the seven major strategies of the General Plan. As indicated in the "Analysis" section, below, the proposed off-sale of alcoholic beverages at the chosen site would be incompatible with existing nearby uses and would potentially impact the general welfare of the surrounding area. Therefore, the proposal does not conform to the overall General Plan strategy of promoting the revitalization of downtown.

## **ENVIRONMENTAL REVIEW**

Pursuant to Section 15180 of the 2002 CEQA Guidelines, it has been determined that the project does not involve new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

## ANALYSIS

The following issues address the project's operational compatibility within its surroundings:

Land Use Compatibility. As noted above, Check Expert is a convenience store that provides a number of personal services, most notably, as indicated by its name, check cashing. The check-cashing component of the establishment is a nonconforming use (see discussion, below) in that it is not allowed within the DG Area overlay zone. Check Expert is located on a small, downtown block bounded by San Fernando Street, to the south; San Pedro Street, to the east; Almaden Avenue, to the west; and Post Street, to the north. The majority of the block is occupied by the Greyhound bus station and parking lot; the block also contains a variety of commercial, entertainment and dining establishments, including two bars (i.e., The Caravan, Kleidon's). Thus, there are, at present, four establishments on the same block (within 500 feet of the project site) as Check Expert that serve alcohol, all of these being bars or restaurants that typically do not sell alcohol for off-site consumption, though the ABC license for bars and restaurants does not prohibit the off-sale of beer and wine by such establishments. Based on the number of existing liquor licenses in the immediate vicinity and proximity to potentially incompatible (i.e., Greyhound bus station) land uses, approval of the proposed project would likely result in the creation of conflicting activities in the project vicinity and the issuance of an additional liquor license in an area that already has a heavy concentration of establishments that sell and serve alcohol.

Liquor License Exception Permit and Police Department Concerns. A Liquor License Exception Permit is required, pursuant to Assembly Bill No. 2897 (Caldera Bill), for liquor license applicants that may be denied by the ABC. As of January, 1995, AB 2897 requires the ABC to deny an application for a liquor license **“if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses”**, or if **“the use would continue current law enforcement problems.”**

The ABC has determined that there is an undue concentration of liquor licenses in the census tract where the proposed project is located and the Police Department and Code Enforcement Division has expressed concern over the proposed off-sale of alcoholic beverages at Check Expert. Of particular concern to the Police Department is the negative effect that would result due to the issuance of an off-sale liquor license in an area that is already heavily populated with alcohol-serving establishments. The Police Department has also stated that the area surrounding Check Expert experiences higher rates of crime as compared with other parts of downtown and the city as a whole. Police Department records indicate that problems involving drugs usage, loitering, vandalism, and general nuisance problems are higher in the vicinity of the project site than in other areas of the city. The Police Department further believes that these problems would continue and potentially worsen with an additional liquor license in project area. A representative of the Police Department will be present at the public hearing on this project to discuss the crime-related issues associated with this proposal.

Moreover, comments from the Police Department run contrary to both the CUP findings and the Liquor License Exception findings that are required for approval of the proposal. Therefore, the Police Department believes that the issuance of the Liquor License Exception would continue, and potentially exacerbate, existing law enforcement problems in the area.

The project applicant may request a Liquor License Exception from the City based on a finding that the granting of a license would constitute a “public convenience and necessity.” However, such a finding is not tenable in this case since the project is located in an area where there are ample establishments, including retail stores, which already sell alcoholic beverages. For instance, in addition to the neighboring properties that sell alcoholic beverages, Zanotto’s Market, located three blocks to the east of Check Expert, on south Second Street, sells alcoholic beverages for off-site consumption. It is, therefore, determined that public convenience and necessity would not be served by the addition of alcoholic beverage sales at Check Expert.

Non-conforming Use and Compatibility Findings. In addition to convenience store retail use, Check Expert presently provides post office mailboxes, wire transfer and check cashing services. All of these services are permitted uses within the CG Zoning District, however, the DG Area overlay specifically prohibits check cashing services within the downtown commercial core. Since Check Expert’s check cashing use predates the establishment of the DG Area overlay, in March 2001, the use is considered “grandfathered,” or non-conforming, and is, therefore, allowed to continue as a non-conforming use according to the provisions of Municipal Code, Section 20.150, et seq.

Additional uses may be added to a site which contains a non-conforming use only upon a finding that **such proposed additional use is compatible with the existing non-conforming use or uses in terms of architecture as well as use (Municipal Code, Section 20.150.080)**. Because Check Express is adding an additional use (off-sale alcohol) to the existing, non-conforming use (check cashing), the determination of compatibility must be made. While not inherently incompatible from the perspective of on-site uses, the addition of off-sale alcoholic beverages to the nonconforming check cashing service raises potential conflicts within the larger context of Check Expert’s compatibility within its surroundings, which were addressed, above, under “Land Use Compatibility” and “General Plan Conformance” and the issues raised by the Police Department. Within this larger context, the proposed addition of off-sale of alcoholic beverages to the nonconforming check cashing use is found to be inconsistent with Municipal Code, Section 20.150.080, cited at the top of this paragraph.

Parking. The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required because the CUP request is not proposing a change of use per se (i.e., retail sales), but rather a change in the type of goods being sold.

## RECOMMENDATION

Staff recommends that the Planning Commission review the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) for off-sale alcohol, with no after-midnight operation.
2. The project site is approximately 0.05 acres and is located in the Commercial General (CG) and (DG) Ground Floor Retail Zoning Districts.

3. A Conditional Use Permit is required for off-sale alcohol. Off-sale alcohol is a conditionally permitted use in the CG Zoning District.
4. The site is located in an area that has an undue concentration of alcohol-serving establishments, as determined by the Department of Alcoholic Beverage Control (ABC).
5. A Liquor License Exception Permit is required because the project site is located in a census tract with an over-concentration of liquor licenses.
6. Four establishments located on the same block (within 500 feet of the project site) as the project site presently provide alcohol service.
7. Check cashing is not a permitted use within the DG Area zoning overlay in the downtown.
8. The project site is designated Core Area on the San Jose 2020 General Plan Land Use / Transportation Diagram.
9. The Core Area designation provides that retail sale facilities may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
10. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
11. The subject site is surrounded by commercial uses, a live performance theater, drinking and eating establishments, and a major transportation facility (Greyhound bus station).
12. The area immediately surrounding the project site experiences higher crime incidents than does the larger downtown area and the City as a whole, as determined by the Police Department.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. The project does not comply with the findings required to issue a Conditional Use Permit as required Municipal Code, Section 20.100.720.
2. The project does not comply with the San Jose Municipal Code, Section 20.80.900, requiring that additional findings be made regarding the off-sale of alcohol beverages.
3. The project does not comply with the San Jose Municipal Code, Section 20.150.080, regarding the addition of new uses where nonconforming uses already exist.
4. The project does not conform to the San Jose 2020 General Plan in that it would place incompatible uses in close proximity to one another within the Downtown Core Area, contrary to the strategy of downtown revitalization.
5. The project site is located in an area with an undue concentration of alcohol-serving establishments and an area that has higher incidence of crime than is typical for the rest of City.

Granting an additional liquor license for the proposed project would potentially continue or exacerbate crime-related problems in the project area, therefore, a justification for “public convenience and necessity” cannot be made.

6. The project conforms to the California Environmental Quality Act in that it does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
7. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

Finally, based upon the above-stated analysis set forth below, the Planning Commission finds that:

1. **The proposed use at the location will:**

- a. **Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area** in that the addition of off sale alcohol use will contribute to the current law enforcement problems in the vicinity; and
- b. **Impair the utility or value of property of other persons located in the vicinity of the site** in that the off-sale of alcohol will alter the value of adjacent restaurants and businesses because it will contribute to the over concentration of such facilities in the immediate vicinity. In addition, the Police Department has stated that the proposed off-sale alcohol use will continue, or potentially exacerbate public safety concerns in the area; and
- c. **Be detrimental to public health, safety or general welfare** in that Police Department comments on the proposed off-sale of alcohol use corroborate that such a use will adversely affect the public health, safety, and general welfare. There are a high number of crime-related incidents, including drug use and vandalism in the immediate vicinity. It is anticipated that additional alcohol service in the area will only worsen the existing problems; and

2. **The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area** because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and

3. **The proposed site is adequately served:**

- a. **By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate** in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
- b. **By other public or private service facilities as are required** in that the scale of the project will not necessitate expansion of existing service facilities.

**ADDITIONAL FINDINGS**

The San Jose Municipal Code Section 20.80.900 requires that additional findings be made regarding the off-sale of alcohol beverages. The findings are as follows:

1. **For such a use at a location closer than five hundred (500) feet from any other such use situate either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages**, in that there are four other establishments with serving alcohol within 500 feet. The establishments are restaurants or bars which offer alcohol for on site consumption; however, the Alcoholic Beverage Control license for off sale alcohol allows sites providing on-site consumption to sell beer and wine for consumption off site. In addition, the project site is located within a census tract defined as having an “undue concentration” of alcohol serving establishments as defined by Assembly Bill (AB) No. 2897, Caldera Bill.
2. **For such a use at a location closer than five hundred (500) feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property in that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use**, in that there are no schools, child care centers or residentially zoned properties within 500 feet of the project site.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and is hereby **denied**. The denial may be appealed within 10 working days of the issuance of the denial.